

# KELLY & JACOBSON

ATTORNEYS AT LAW

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September 10, 2007

District Court Administrator  
Hennepin County District Court  
Division IV - Southdale  
7009 York Avenue South  
Edina, MN 55435

>>> **HAND DELIVERED** <<<

RE: State of Minnesota v. Larry Edwin Craig  
District Court Case No.: 27-CR-07-043231

Dear Sir or Madam:

Defendant, Larry Edwin Craig, through his attorneys, submits for filing the following:

1. Rule 15.05 Motion;
2. Affidavit of Service;
3. Motion for *Pro Hac Vice* Admission of Kathleen H. Sinclair, with Affidavit and Proposed Order;
4. Motion for *Pro Hac Vice* Admission of William R. Martin, with Affidavit and Proposed Order.

With a copy of this letter, Defendant is serving Christopher P. Renz, attorney for the Plaintiff.

Sincerely,



Thomas M. Kelly

TMK/jdk  
Enclosures

## State of Minnesota

## District Court

Hennepin County

07 SEP 11 11:26

Judicial District: Fourth

Court File Number: 27-CR-07-043231

Case Type: Criminal

STATE OF MINNESOTA

Plaintiff/Petitioner

And

## Affidavit of Personal Service

LARRY EDWIN CRAIG

Defendant/Respondent

STATE OF MINNESOTA

) SS

COUNTY OF HENNEPIN

I, Thomas M. Kelly, being first duly sworn, state that I am at least 18 years of age, and that on September 10, 2007, I served the following papers: Rule 15.05 – Motion to Withdraw Plea, Motion for Pro Hac Vice Admission of Kathleen H. Sinclair, with Affidavit and Proposed Order, Motion for Pro Hac Vice Admission of William R. Martin, with Affidavit and Proposed Order upon Christopher P. Renz by and delivering a true and correct copy of each document to Christopher P. Renz at 3300 Edinborough Way, Suite 600 in the City of Edina, State of Minnesota, Zip Code 55435.

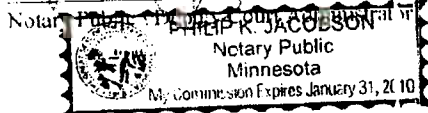
Dated:

Sept 10, 2007

Signature (Sign only in front of notary public or court administrator)

Name: Thomas M. KellyAddress: Kelly & Jacobson220 South Sixth Street, Suite 215City/State/Zip: Minneapolis, MN 55402Telephone: (612) 339-5055

Sworn / affirmed before me this

10<sup>th</sup> day of Sept., 2007

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,  
Plaintiff.

District Court Case No.: 27-CR-07-043231

v.

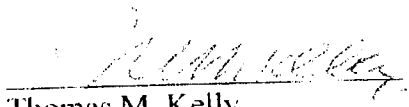
**MOTION FOR *PRO HAC*  
*VICE* ADMISSION OF  
KATHLEEN SINCLAIR**

LARRY EDWIN CRAIG.

Defendant.

I, Thomas Kelly, an active member in good standing of the bar of the State of Minnesota, move that this Court admit *pro hac vice* Kathleen H. Sinclair, an attorney admitted to practice in the trial courts of Georgia and the District of Columbia, but not admitted to the bar of this Court, who will be counsel for the Defendant in this case. I am aware that Rule 5 of the Minnesota General Rules of Practice requires me to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

Dated: Sept 10, 2007.

  
Thomas M. Kelly  
Attorney ID # 54914  
**KELLY & JACOBSON**  
Attorneys for the Defendant  
(Minnesota)  
220 South Sixth Street, Suite 215  
Minneapolis, Minnesota 55402  
Phone: (612) 339-5055

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALESTATE OF MINNESOTA,  
Plaintiff,

District Court Case No.: 27-CR-07-043231

v.

**MOTION FOR *PRO HAC*  
*VICE* ADMISSION OF  
KATHLEEN SINCLAIR**LARRY EDWIN CRAIG,  
Defendant.**Affidavit of Proposed Admittee**DISTRICT OF COLUMBIA    )  
                                  )   ss.  
                                  )

Kathleen H. Sinclair, being duly sworn, states the following under oath:

I am currently admitted to practice and in good standing in the trial courts of the following jurisdiction(s), but not admitted to the bar of this Court:

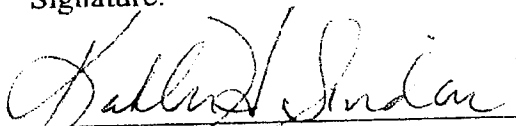
State	License #	Status	Admission Date
Georgia	323440	Active/Good Standing	2002
District of Columbia	501594	Active/Good Standing	2007

I understand that if this Court grants me admission *pro hac vice*, Rule 5 of the Minnesota General Rules of Practice requires the Minnesota lawyer bringing this Motion to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

I also understand that Rule 5 of the Minnesota General Rules of Practice specifies that by appearing pursuant to that rule I am subject to the disciplinary rules and regulations governing Minnesota lawyers and that by applying to appear or appearing in any action I am subject to the jurisdiction of the Minnesota courts.

Dated: September, 2007.

Signature:



Kathleen H. Sinclair

D.C. Bar # 501594

**SUTHERLAND ASBILL & BRENNAN LLP**

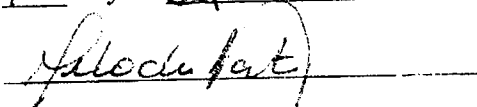
Attorneys for the Defendant

1275 Pennsylvania Avenue, NW

Washington, DC 20004-2415

Phone: (202) 383-0271

Subscribed and sworn to before me this  
7th day of September, 2007



**Melodie Kate**

Notary Public, District of Columbia

My Commission Expires 11-30-2008

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA.

District Court Case No.: 27-CR-07-043231

Plaintiff.

v.

**MOTION FOR *PRO HAC*  
*VICE* ADMISSION OF  
KATHLEEN SINCLAIR**

LARRY EDWIN CRAIG.

Defendant.

**ORDER**

The foregoing Motion is hereby GRANTED.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge of District Court

Dated: \_\_\_\_\_, 20\_\_.

For the Court:

\_\_\_\_\_  
Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,

District Court Case No.: 27-CR-07-043231

Plaintiff.

v.

LARRY EDWIN CRAIG,

Defendant.

**MOTION FOR  
ADMISSION OF  
WILLIAM R. MARTIN  
TO APPEAR *PRO HAC*  
*VICE*****ORDER**

The foregoing Motion is hereby GRANTED.

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge of District Court

Dated: \_\_\_\_\_, 20\_\_.

For the Court:

\_\_\_\_\_  
Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FILED

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

07 SEP 10 2007 10:26

STATE OF MINNESOTA,

District Court Case No.: 27-CR-07-043231

Plaintiff.

v.

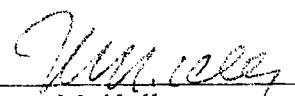
**MOTION FOR *PRO HAC*  
*VICE* ADMISSION OF  
WILLIAM R. MARTIN**

LARRY EDWIN CRAIG,

Defendant.

I, Thomas Kelly, an active member in good standing of the bar of the State of Minnesota, move that this Court admit *pro hac vice* William R. Martin, an attorney admitted to practice in the trial courts of Ohio and the District of Columbia, but not admitted to the bar of this Court, who will be counsel for the Defendant in this case. I am aware that Rule 5 of the Minnesota General Rules of Practice requires me to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

Dated: Sept (10), 2007.

  
Thomas M. Kelly  
Attorney ID # 54914  
**KELLY & JACOBSON**  
Attorneys for the Defendant  
(Minnesota)  
220 South Sixth Street, Suite 215  
Minneapolis, Minnesota 55402  
Phone: (612) 339-5055

WO 791426.1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,

District Court Case No.: 27-CR-07-043231

Plaintiff,

v.

**MOTION FOR *PRO HAC*  
*VICE* ADMISSION OF  
WILLIAM R. MARTIN**

LARRY EDWIN CRAIG,

Defendant.

**Affidavit of Proposed Admittee**DISTRICT OF COLUMBIA    )  
                                      )   ss.  
                                      )

William R. Martin, being duly sworn, states the following under oath:

I am currently admitted to practice and in good standing in the trial courts of the following jurisdiction(s), but not admitted to the bar of this Court:

State	License #	Status	Admission Date
Ohio	0033955	Active/Good Standing	1976
District of Columbia	465531	Active/Good Standing	2000

I understand that if this Court grants me admission *pro hac vice*, Rule 5 of the Minnesota General Rules of Practice requires the Minnesota lawyer bringing this Motion to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

WO 7914261

I also understand that Rule 5 of the Minnesota General Rules of Practice specifies that by appearing pursuant to that rule I am subject to the disciplinary rules and regulations governing Minnesota lawyers and that by applying to appear or appearing in any action I am subject to the jurisdiction of the Minnesota courts.

Dated: Sept. 7, 2007.

Signature:



William R. Martin

D.C. ID # 465531

**SUTHERLAND ASBILL & BRENNAN LLP**

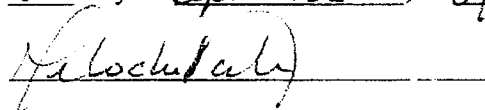
Attorneys for the Defendant

1275 Pennsylvania Avenue, NW

Washington, DC 20004-2415

Phone: (202) 383-0271

Subscribed and sworn to before me this  
7<sup>th</sup> day of September, 2007.



**Melodie Kate**  
Notary Public, District of Columbia  
My Commission Expires 11-30-2008



allegations. That meeting, along with the underlying investigation, weighed heavily on the Senator's mind. In fact, the Senator requested that the *Statesman* cease its activities, but the *Statesman* continued its efforts. Based on these circumstances, however, the Senator had reason to believe that, without additional corroborating evidence, the *Statesman* would not publish these false and unproven allegations.

Shortly after Senator Craig's meeting with the *Idaho Statesman*, in June 2007, Senator Craig was arrested and charged with interference with privacy and disorderly conduct, based on an arrest stemming from an undercover operation targeting gay men in a public men's restroom at the Minneapolis International Airport. Despite Senator Craig's denial of any inappropriate behavior, he was panicked that such allegations would be made public and that they would provide the *Idaho Statesman* with an excuse to publish its baseless article. While in this state of intense anxiety, Senator Craig felt compelled to grasp the lifeline offered to him by the police officer: namely that if he were to submit to an interview and plead guilty, then none of the officer's allegations would be made public. Thus, rather than seek legal advice from an attorney to assist him in publicly fighting these charges and potentially protract the issue, Senator Craig's panic drove him to accept a guilty plea, the terms of which offered him what he thought was a private, expeditious resolution of this matter.

Senator Craig maintains his innocence with respect to these charges, and it would be manifestly unjust not to allow his guilty plea, entered in a state of fear, to be withdrawn. As will be demonstrated below, Senator Craig respectfully moves the Court to allow him to withdraw his guilty plea because: 1) the plea was not knowingly and understandingly made, which would have been clear had there been a colloquy with a judge; and 2) the evidence is insufficient to support a guilty plea as a matter of law.

### FACTUAL BACKGROUND

On June 11, 2007, Senator Craig traveled through the Minneapolis International Airport on a layover between Washington, D.C. and his home state of Idaho. *See* Affidavit of Larry Edwin Craig ("Craig Aff."), attached hereto as Exhibit A, ¶ 3. Between his flights, Senator Craig entered the main men's public restroom of the Northstar Crossing in the Lindbergh Terminal. *Id.* ¶ 3. Unbeknownst to Senator Craig, Officer Dave Karsnia, an undercover police officer with the Minneapolis Airport Police, had already entered that restroom and had proceeded to an unoccupied stall in the back of the restroom. *See* Police Report, attached hereto as Exhibit B. Officer Karsnia was working in the airport as part of a sting operation related to sexual activity in this men's room, in which he has made numerous arrests targeted at homosexual men. *Id.* In fact, Officer Karsnia claims that he is able to recognize the behavior of a gay man when he sees it. *Id.*

While Officer Karsnia was in the stall, Senator Craig approached the outside of the stall. Senator Craig, anxiously waiting for a stall to free so that he could use the facilities, stood outside of the stall and glanced into Officer Karsnia's stall to determine if it was empty. *See* Exhibit B; *see also* Craig Aff. ¶ 4. Officer Karsnia stated in his report that he observed Senator Craig look down at his hands, "fidget[]" with his fingers, and look through the crack into Officer Karsnia's stall. *See* Exhibit B. Also according to Officer Karsnia's report, Senator Craig entered the stall to the left of Officer Karsnia's and placed his roller bag against the front of the stall door, tapped his right foot, tapped his toes several times, and moved his foot "closer" to Officer Karsnia's, all innocent acts. *See* Exhibit B. Also according to the report, Senator Craig then swiped his left hand under the stall divider for a few seconds in the direction from the front (door side) of the stall back toward the back wall, with his hand facing toward the ceiling as he

guided it at the stall divider. *See id.* Senator Craig maintains that he had moved his hands to pick a piece of paper from the floor. *See* Craig Aff. ¶ 5. *See also* Arrest Interview Transcript, attached hereto as Exhibit C. The report alleges that Senator Craig moved his hand two additional times, yet at no point did Senator Craig either speak to Officer Karsnia, intentionally touch Officer Karsnia, or engage in any other conduct toward Officer Karsnia. *See* Exhibit B. *See also* Craig Aff. ¶¶ 5-6.

According to Officer Karsnia's report, Officer Karsnia displayed his police identification to Senator Craig by holding it in his right hand by the floor. *See* Exhibit B. Eventually, Senator Craig exited the stall, and Officer Karsnia motioned for Senator Craig to exit the restroom and showed Senator Craig his credentials. *See id.* Officer Karsnia physically removed Senator Craig from the restroom, took him through the public airport areas, and placed him in custody within a police interrogation room. *See* Exhibit B; Craig Aff. ¶ 8. Alarmed at the sequence of events, Senator Craig acceded to Officer Karsnia's orders. *See* Craig Aff. ¶ 8.

In the interrogation room, prior to Senator Craig being advised of the requisite *Miranda* warning, Officer Karsnia advised Senator Craig that he could either plead guilty to an offense and "won't have to explain anything ..." and that he would "pay a fine" and "be done," or otherwise that Officer Karsnia would testify regarding the events in open court. *See* Exhibit C. *See also* Craig Aff. ¶ 10. After Officer Karsnia advised Senator Craig of his *Miranda* warning, he asked Senator Craig to give his "side of the story." *See* Exhibit C. Senator Craig denied engaging in any improper conduct. *See* Craig Aff. ¶ 9. Rather, Senator Craig indicated that he had simply gone into a public men's bathroom to use the facilities, and sat down in the toilet stall. *Id.* ¶¶ 3, 9; Exhibit C. Senator Craig stands well over six feet tall and, therefore, explained that when using the restroom he has a wide stance. Exhibit C. Further, in response to the

allegation that he had reached under the toilet stall, he indicated that he had merely picked up a piece of paper from the floor. *Id.* See also Craig Aff. ¶ 5. Senator Craig has never changed or recanted his assertion that he did not engage in improper conduct, and, at the time the plea offer was drafted, both the police officers and prosecutors were aware that he steadfastly denied engaging in any improper conduct. See Craig Aff. ¶¶ 6, 9, 13.

Rather than consider Senator Craig's explanation, Officer Karsnia told Senator Craig that he was "skipping some parts," and that he was "not being truthful." See Exhibit C. Officer Karsnia also told Senator Craig that he was "disappointed" in him and that he did not "want to be lied to." *Id.*; see also Craig Aff. ¶ 9. Such allegations added to Senator Craig's already rising anxiety level. See Craig Aff. ¶¶ 9, 10. Officer Karsnia told Senator Craig that: "You're gonna [sic] have to pay a fine and that will be it. Okay. I don't call media, I don't do any of that type of crap." See Exhibit C. In fact, Officer Karsnia told Senator Craig on three occasions during the interview that he would need to pay a fine and that there would be nothing more to the action. *Id.* Officer Karsnia ended the interrogation by insulting the Senator and implicating his political career, stating that it was "[n]o wonder why [the country is] going down the tubes." *Id.* Although Officer Karsnia advised Senator Craig that he could plead guilty to an offense to dispose of the matter, there is no indication from Officer Karsnia's report or from the recorded interview that he advised Senator Craig of the exact nature of the charges being pursued or the applicable penalties. *Id.*; see also Craig Aff. ¶ 11.

Senator Craig was subsequently charged with disorderly conduct pursuant to Minn. Stat. § 609.72 sub. 1(3) (a misdemeanor) and interference with privacy pursuant to Minn. Stat. § 609.746 sub. 1(c) (a gross misdemeanor). See Complaint, attached hereto as Exhibit D. Without the assistance of counsel, and as repeatedly prompted and advised by Officer Karsnia, Senator

Craig eventually pled guilty, via the United States Postal Service, to the disorderly conduct charge by signing a Petition to Enter Plea of Guilty – Misdemeanor and mailing it to the Court. *See* Craig Aff. ¶ 12. This Petition was drafted by the prosecuting attorney. *See* Craig Aff. ¶ 13. Senator Craig signed the Petition on August 1, 2007, and, in his mind, the terms of the plea included the promise made by Officer Karsnia that the alleged incident would not be released to the media. *See* Craig Aff. ¶¶ 12-13. The Petition, delivered by mail rather than entered in person, was filed with this Court on August 8, 2007. *See* Guilty Plea, attached hereto as Exhibit E. The plea was not entered personally before a judge. *See id.* The jail time and \$500 of the fine were stayed for one year. *See id.* Senator Craig was assessed \$500 and a surcharge of \$75, for a total of \$575. *See id.* Even at the time the prosecutor agreed to a guilty plea, Senator Craig was maintaining his innocence. *See* Craig Aff. ¶ 13.

#### **LEGAL STANDARD**

To be valid, a guilty plea must be "accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." *Munger v. State*, \_\_ N.W. 2d \_\_, 2007 WL 2417094, at \*2 (Minn. App. Aug. 28, 2007) (citing *Sykes v. State*, 578 N.W.2d 807, 812 (Minn. App. 1998) (quotations omitted)). While there is no absolute right of withdrawal, a defendant may withdraw a guilty plea pursuant to Minn. R. Cr. P. 15.05, even after sentencing, if he shows that the withdrawal of the plea is necessary to correct a manifest injustice. *Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007). A district court is vested with broad discretion in determining whether a defendant is allowed to withdraw his guilty plea. *Black*, 725 N.W.2d at 775-76 (Minn. App. 2007); *Butala v. State*, 664 N.W.2d 333, 338-39 (Minn. 2003) (holding that the ultimate decision of whether to allow a withdrawal of a guilty plea under the fair and just standard is left to the sound discretion of the trial court). As a matter of law, it is manifestly unjust to refuse to allow a guilty plea

withdrawal if the plea was not "accurate, voluntary, and intelligent." *Munger*, 2007 WL 2417094 at \* 2; see also *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Indeed, a court should not accept a plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty. *State v. Goulette*, 258 N.W.2d 758, 761-62 (Minn. 1977); *State v. Hoaglund*, 307 Minn. 322, 240 N.W.2d 4, 5-6 (1976) (where record of accused's plea of guilty to a charge of kidnapping person under sixteen years of age and trial court's adjudication of guilt and entry of judgment of conviction was inadequate to support such court's determination of factual basis for plea, interest of justice required reversal).

### **ARGUMENT**

#### **I. IT WOULD BE MANIFESTLY UNJUST NOT TO ALLOW SENATOR CRAIG TO WITHDRAW HIS FLEA OF GUILTY**

##### **1. Inquiry by the Court Would Have Demonstrated that the Plea was not Made Knowingly and Understandingly**

Senator Craig's plea does not satisfy the factual basis requirement for a guilty plea, which would have been apparent to a court had he been afforded a judicial colloquy. Rule 15.02 of the Minnesota Rules of Criminal Procedure requires that "before the court accepts a plea of guilty to any offense punishable upon conviction by incarceration, any plea agreement shall be explained in open court." That rule requires that the Court or counsel inquire into whether the defendant understands the charges levied against him and the potential penalty faced following the entry of a guilty plea, whether he has had the assistance of counsel, and whether he understands that by entering the plea he is waiving his constitutional rights. See *id.* *Inter alia*, the rule requires that following these questions, the Court, or counsel, elicit information to ensure that there is a factual

basis for the entry of a guilty plea. *See id.* Rule 15.03, which governs “plea by mails” such as the plea petition entered in this case, requires the same protections as Rule 15.03.<sup>1</sup>

Not only must a guilty plea be voluntary and accurate, it also must be intelligent (*i.e.* “understandingly made”). *Munger*, 2007 WL 2417094, at \*2. “The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983), *cited in Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). In other words, a defendant must understand that what he pleads to constitutes a crime. Here, however, Senator Craig has repeatedly denied that his actions on June 11, 2007 constituted a crime.

Senator Craig, in submitting his plea by mail, never appeared in court and was never questioned by a judge. The factual basis for the guilty plea states that he “[e]ngaged in conduct which [he] knew or should have known tended to arouse alarm or resentment or others, which conduct was physical (versus verbal) in nature.” *See* Exhibit E. The plea, however, does not describe the conduct alleged, and as a result, does not even recite the minimum elements of Section 609.72, sub. 1(3), the crime for which Senator Craig was convicted. Furthermore, all of the statements in which Senator Craig has described his conduct have constituted claims of innocence and denials of any wrongdoing. In this instance, therefore, with the factual defects underlying the basis of the plea and Senator Craig’s interpretation of the events, it was necessary for a court to examine Senator Craig’s understanding of the plea agreement to determine if the

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<sup>1</sup> That rule states that: “The defendant or defense counsel may file with the court a petition to plead guilty as provided for in the Appendix B to Rule 15 signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.”

plea was intelligently made. Rules 15.02 and 15.03 were adopted to ensure that a defendant does not enter into a plea without knowing and understanding the constitutional rights he is waiving. These rules are further designed to ensure that people do not plead guilty to crimes they did not commit. Senator Craig is not a lawyer, and like any other non-lawyer, should not be expected to understand the intricacies of constitutional law. Yet, without any judicial intervention to ensure that Senator Craig understood the plea agreement, Senator Craig signed a plea agreement that waived his constitutional rights and pled guilty to a crime he has steadfastly denied committing.

Had an appropriate judicial inquiry occurred in this case, the court would have quickly concluded that, faced with the pressure of an aggressive interrogation and the consequences of public embarrassment, Senator Craig panicked and chose to plead to a crime he did not commit. The Court would have elicited information that Senator Craig did not fully understand that he waived his right to challenge the use of statements made prior to being read his *Miranda* warning, that he waived his right to a trial before a jury of his peers, and most importantly, that he waived the right to have that very jury determine if these facts proved that he was guilty of the alleged crime beyond a reasonable doubt. In fact, had the spirit of the Minnesota rules been followed, the Court would have determined that Senator Craig waived all these constitutional rights in a moment of panic, and chose to plead guilty to a crime he did not commit based in part on the law enforcement officer's inaccurate statements that doing so would ensure that the alleged actions would not be made public.<sup>2</sup>

In short, without the benefit of the assistance of counsel or an examination by a judge, Senator Craig was induced to accept a plea based on Officer Karsnia's assurances that the matter

would not be made public if he acquiesced to the Officer's demands – an unfulfilled promise that proved devastating. Had Senator Craig been afforded the opportunity to engage in a colloquy with the court, the court could have been notified as to any promises that had been made to the Senator, and Senator Craig would have been on notice as to whether those promises were binding on the court and the parties. *Cf. Perkins*, 559 N.W.2d at 689 (citing *Schwerm v. State*, 288 Minn. 488, 491, 181 N.W.2d 867, 868 (1970) (record made clear that defendant's own counsel told him that prosecutor's statement would not bind the court)).

Further inquiry into the allegations also would have elicited the fact that, as indicated in the transcript, Senator Craig was distracted by the fact that he might miss his flight, and seemingly unaware of the fact that the police were contemplating charging him with a misdemeanor rather than with a routine citation, did not exercise his right to counsel. Exhibit C: Craig Aff. ¶ 11. Indeed, only after discovering that if he paid a fine he would be "done," did Senator Craig submit to the interview. *See* Exhibit C. A colloquy before the Court would have determined that had Senator Craig exercised his right to counsel, he would not have submitted to the interview, and counsel would have explained the potential charges against him, the defenses available, and the consequences of such charges, including any potential imprisonment, of which he was not previously informed. *See* Craig Aff. ¶ 11. Moreover, as the arrest interview transcript indicates, Senator Craig and Officer Karsnia had significantly differing interpretations of the events, and there appears to have been no eye witness interviewed to corroborate Officer Karsnia's allegations. *See* Exhibit C; Craig Aff. ¶ 9. Had Senator Craig exercised his opportunity to consult competent counsel prior to his interview, he would have been given a

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<sup>2</sup> It should be noted that, unlike the form recommended in Appendix B of the Minnesota Rules of Criminal Procedure, the plea petition used in this case does not contain a place for a reviewing

realistic evaluation of the facts of the case, and as a result, facing these unsubstantiated "he said," "she said" allegations, he would not have pled guilty to the offense of which he has maintained his innocence. As such, because these procedures were not exercised, the Court never had the opportunity to discern the fact that this plea was not intelligent, as that word is interpreted by Minnesota law, and that the facts submitted in support of the plea do not support a crime.

Thus, it would be manifestly unjust not to allow Senator Craig to withdraw his plea of guilty. Accordingly, Senator Craig respectfully requests that the Court allow him to withdraw his guilty plea.

## **2. There is Insufficient Evidence to Support a Guilty Plea**

Insufficient evidence exists to support a guilty plea in this case. Thus, it would be manifestly unjust not to allow Senator Craig to withdraw that plea. The disorderly conduct statute defines the crime as "offensive, obscene, abusive, boisterous, or noisy conduct or...offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others." Minn. Stat. §609.72, sub. 1(3). Even assuming that the officer's statements in his police report are accurate, which Senator Craig emphatically denies, the facts do not support the criminal charges that Senator Craig engaged in any disorderly conduct as defined by the statute.<sup>3</sup>

Officer Karsnia's report indicates that he merely observed the following: Senator Craig looked down at his hands and "'fidgeted'" with his fingers; he looked through the crack into Officer Karsnia's stall; he entered a stall to the left of Officer Karsnia's and placed his roller bag

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judge to indicate that the plea has been reviewed and accepted. *See* Exhibit E.

<sup>3</sup> As the transcript of the arrest interview indicates, Senator Craig affirmatively disagreed with Officer Karsnia's interpretation of the gestures. Indeed, Senator Craig even went so far as

against the front of the stall door he tapped his right foot; he tapped his toes several times and moved his foot "closer" to Officer Karsnia's; and he swiped his left hand three times under the stall divider for a few seconds. At no point prior to Officer Karsnia's showing Senator Craig police credentials is there any indication that Senator Craig attempted to speak to Officer Karsnia, that Senator Craig intentionally touched Officer Karsnia, or that Senator Craig engaged in any other "improper" activity. *See* Craig Aff. ¶¶ 6-7; Exhibit B. And, while Officer Karsnia indicated in his report that, in his opinion, some of the cited behavior is consistent with that of individuals who have engaged in lewd conduct, at no point did Officer Karsnia observe any patently lewd conduct, any affirmative solicitations for sexual contact, or any other disorderly behavior. *See* Exhibit B.

Indeed, taking Officer Karsnia's interpretation of the events as true, at most, he observed several ambiguous – but legal – hand and foot gestures. Such innocuous conduct is insufficient to support a plea of guilty for a charge of disorderly conduct, particularly when the only evidence of the accused's criminal intent involves his own denials of any wrongdoing. *See, e.g., Bearman v. State*, 301 Minn. 180, 184, 221 N.W.2d 698, 701 (Minn. 1974) (defendant entitled to withdraw guilty plea where defendant's statements inconsistent with guilty plea). In fact, "[t]he very wording of the [statute] makes it plain that this prohibition is against loud, boisterous, or obnoxious words and conduct which disturb or bother people who may be exposed to the same. The prohibition in the [statute] indicates violent conduct which attracts attention as the basis for the offense." *City of St. Paul v. Campbell*, 287 Minn. 171, 174, 177 N.W.2d 304 (Minn. 1970) (discussing similar St. Paul ordinance). In *Campbell*, the defendant photographed a 13-year-old

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to tell Officer Karsnia that Officer Karsnia had obviously seen something that did not happen. *See* Exhibit C. *See also* Exhibit E.

girl in the nude while alone in his apartment with the girl without the permission of the girl's mother and after misrepresenting his intentions to the girl's mother. It may have violated other laws, but the Court found in this case that the behavior did not constitute "disorderly conduct" under the St. Paul ordinance. *And see In re Welfare of K.L.W.*, No. A06-78, 2006 WL 2530540 (Sept. 5, 2006) (unpublished opinion) (reversing conviction of juvenile offender for violating disorderly conduct based on insufficient evidence where juvenile drew cartoon in his personal notebook, juvenile did not intend for anyone to see drawing, the cartoon was found by a teacher, juvenile's conduct was not abusive, boisterous, noisy, offensive, or obscene, and juvenile did not know or have reasonable grounds to know that his behavior could arouse alarm, anger, or resentment in others).

Mere "annoyance does not justify a finding of disorderly conduct." *State v. Korich*, 219 Minn. 268, 271, 17 N.W.2d 497 (Minn. 1945) (conduct of a "Jehovah's Witness" in entering apartment building against caretaker's previous order and, in a quiet and orderly manner, going from one apartment to another for purpose of distributing literature to any tenant who would listen, and then leaving the premises peacefully when arrested by officers, did not constitute "disorderly conduct" under Minneapolis city ordinance). Senator Craig's conduct as stated in Officer Craig's report, viewed in its worst light, does not even rise to the level of annoying, much less disorderly as that conduct is contemplated under Minnesota law.

As a result, and as a matter of law, there is not a sufficient factual basis to support Senator Craig's guilty plea, and Senator Craig should be afforded the opportunity to withdraw that guilty plea and to have his constitutional rights restored, which he unknowingly waived in response to repeated suggestions from the law enforcement official in this matter. In *Munger v. State*, a recent case from the Court of Appeals, it was held that a defendant's guilty plea to first-degree

burglary was not accurate, and therefore, that it would be manifestly unjust not to allow him to withdraw the plea. 2007 WL 2417094. The defendant was charged with first-degree burglary, which requires the state to prove that he entered a building without consent and with the intent to commit a crime, that the building is a dwelling, and that another person, not an accomplice, was present when he entered. *Id.* at \* 3 (citing Minn. Stat. § 609.582, subd. 1(a) (2004)). At the plea hearing, the defendant had admitted that he reached his hand into an open window and moved the curtain with his hand in order to commit a crime (interference with privacy). *Id.* He later argued, however, that his plea was inadequate because he did not enter the building with the intent to commit a crime *within* the building. *Id.* at \* 2. The Court held that the burglary statute required that a person enter a building with the intent to commit a crime while in the building, and that, as a result, the defendant's plea was not accurate. *Id.* at \*5. Accordingly, the Court of Appeals held that it was an abuse of discretion for the district court to deny his post-conviction petition to withdraw his guilty plea. *Id.* at \*6.

In *Bollinger v. State*, 647 N.W.2d 16 (Minn. App. 2002), a defendant was entitled to withdraw his guilty plea to a second-degree controlled substance charge, even though it was undisputed that both the prosecutor and the defense counsel had intended for the defendant to plead guilty to that offense. In order to establish the requisite factual basis for the plea, the defendant was mistakenly questioned not about the specific incident for which he had been charged, but about an unrelated incident, which in fact, formed the basis of a lesser offense. *Id.* at 21-22. The Court stated that "attorneys are officers of the court with a duty to act with due diligence and candor toward the court." *Id.* at 22 (citing Minn. R. Gen. Pract. 2.03(a); Minn. R. Prof. Conduct 1.3 and 3.3). The Court stated that "the prosecutor and defense counsel share the court's burden to reasonably ensure that pleas are accurately made on the record. The interests of

justice are not served by requiring appellant to bear the consequences of the erroneous questioning in their case.” *Id.* In the instant case, since there was no judge or defense counsel involved in reviewing the terms of and facts surrounding the plea, the only officer of the court with any meaningful involvement was the prosecutor, who mistakenly allowed this plea to be submitted without a proper factual foundation.

Finally, in *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994), it was held that a withdrawal of a criminal sexual conduct plea was necessary to correct a manifest injustice, where the original police investigation was incomplete, there was an inadequate factual basis for the plea, and new witnesses had been located who corroborated certain aspects of the defendant’s version of the events. In particular, the Court noted that there was a substandard police investigation and an inability of the defendant to obtain potentially exculpatory evidence. *Id.* at 746-47. The Court stated that “the trial court bears the primary responsibility to advise and interrogate the defendant in sufficient detail to establish an adequate factual basis for the plea.” *Id.* at 747 (citing *Hoaglund*, 307 Minn. 322, 240 N.W.2d 4 (1976)). And see *Beaman v. State*, 301 Minn. 180, 221 N.W.2d 698 (Minn. 1974) (defendant was entitled to withdraw guilty plea to charge of first-degree manslaughter where there was merit to the defendant’s defenses and claims of innocence). As these cases have indicated, a plea cannot be accurate if there is not sufficient evidentiary support for the plea. Here, because there is an insufficient evidentiary basis for Senator Craig’s guilty plea, that plea is not accurate as required under Minnesota law, and, as a result, it would be manifestly unjust not to allow Senator Craig to withdraw it.

Accordingly, Senator Craig respectfully requests that he be permitted to withdraw his plea of guilty in the above-referenced criminal action entered August 8, 2007, due to the fact that there is an insufficient factual basis, as a matter of law, to support his plea of guilty.

**CONCLUSION**

Senator Craig respectfully submits that he is innocent of the charges against him and requests the right to withdraw his plea to prevent a manifest injustice, and further requests that he be allowed to present a defense to these charges.

In addition, Senator Craig respectfully requests that the Court schedule this matter for oral argument.

Respectfully submitted,

DATED: September 10, 2007

William R. Martin (*pro hac* application  
to be submitted)

D.C. ID # 465531

Kathleen H. Sinclair (*pro hac*  
application to be submitted)

D.C. ID # 501594

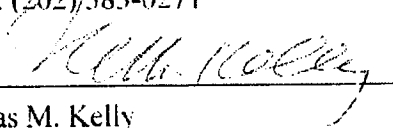
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Phone: (612) 339-5055

# Exhibit A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT  
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,

District Court Case No.: 27-CR-07-043231

Plaintiff,

v.

**RULE 15.05 - MOTION TO  
WITHDRAW PLEA**

LARRY EDWIN CRAIG,

Defendant.

**AFFIDAVIT OF LARRY EDWIN CRAIG**  
**IN SUPPORT OF MOTION TO WITHDRAW PLEA**

I, Larry Edwin Craig, being duly sworn, depose and say:

1. I am a United States Senator from the State of Idaho and am the defendant in the above-referenced criminal action. I am over 18 years of age and competent to testify to the facts stated herein, which are based on my personal knowledge.
2. In May of 2007, I submitted to an interview with the *Idaho Statesman*, in an effort to subdue efforts on that paper's part to perpetuate false rumors about my private sexual life.
3. Shortly after that interview, on June 11, 2007, while on a layover at Minneapolis International Airport between Washington, D.C. and my home state of Idaho, I entered the men's public restroom of the Northstar Crossing in the Lindbergh Terminal, for the sole purpose of using the restroom facilities.
4. Anxious at the thought of missing my flight, I glanced into one of the stalls to determine if it was empty.

WO 791663.1

5. I entered a stall, eager to move on to my departing gate. While in the stall, I placed my roller bag against the front of the stall door and spread my legs. Also while in the stall, I looked down and retrieved a piece of paper from the floor with my right hand.

6. At no time did I engage in offensive, obscene, abusive, boisterous, or noisy conduct or offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others while in the men's room. Nor did I have any intent to engage in any illegal behavior.

7. While I was in the stall, I noticed an individual in the stall to my right place police identification in his hand under the divider so that I could see it, and then he abruptly pointed to the door with his finger.

8. When I exited the stall, I was physically removed from the restroom by Officer Karsnia, the officer in the stall next to mine, taken through the public areas of the airport, and led into a room, where I was questioned. Overwhelmed by the events, I acquiesced to the officer's demands and submitted to the interview.

9. During my interview, I repeatedly asserted my innocence and I told Officer Karsnia that I disagreed with his interpretation of the events in the men's restroom, but he indicated to me that he believed I was lying.

10. Officer Karsnia told me several times during the interview that I could plead guilty to an undisclosed crime, pay a fine, and be "done" with the situation. I believed him and, based in part on his representation, I decided to plead guilty.

11. At no time during that interview did Officer Karsnia explain to me the nature of the charges against me or the potential consequences.

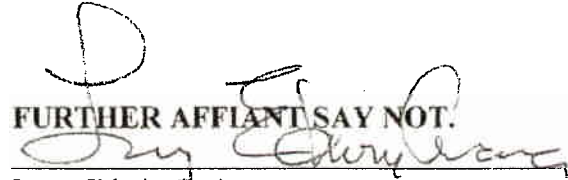
12. Deeply panicked about the events, and based on Officer Karsnia's representations to me regarding the potential outcome, my interest in handling the matter expeditiously, and the risk

that protracting the issue could lead to unnecessary publicity, I did not seek the advice of an attorney on the date of my arrest, and I made the decision on that date to seek a guilty plea to whatever charge would be lodged against me.

13. On August 1, 2007, following my decision in June, I signed a petition to plead guilty to a misdemeanor charge of disorderly conduct, even though I believed that I was not guilty of any criminal offense. That Petition was drafted by the prosecuting attorney in this action. Because I continued to seek a speedy resolution of the matter, I did not seek the advice of an attorney before entering my plea.

14. I hereby assert that I am innocent of all charges lodged against me, and I wish to change my plea from Guilty to Not Guilty.

FURTHER AFFIANT SAY NOT.

  
Larry Edwin Craig

Sworn and subscribed to before me this 8<sup>th</sup> day of September, 2007.



  
Notary Public

# Exhibit B

AGENCY: AIRPORT POLICE DEPT.  
Jurisdiction: MN0272500  
Report Date / Time: 8/11/2007 12:22:19 PM  
Incident/Case Number: 07002008  
Case Description: Lewd Conduct  
Primary Officer Name/ID: Karsnia, Dave/DK011  
Approved By:  
Date/Time Printed: 6/12/2007 12:48:40 PM

**Narrative: Page 7**

\*\*\*\*\*  
Narrative Title: Lewd Conduct  
Date Entered: 6/12/2007 12:42:46 PM

07002008

On 06/11/07, at about 1200 hours, I was working a plain-clothes detail involving lewd conduct in the main men's public restroom of the Northstar Crossing in the Lindbergh Terminal. The Airport Police Department has received civilian complaints and has made numerous arrests regarding sexual activity in the public restroom.

I entered the men's restroom and proceeded to an unoccupied stall in the back of the restroom. Other people were in the restroom for their intended purposes. Some, but not all of the bathroom stalls were occupied. While seated in the stall, I was the third stall from the wall which was to my left (East). From my seated position, I could observe the shoes and ankles of person seated to the right of me. An unidentified person entered the stall to the left of me. From my seated position, I was able to see his shoes and ankles.

At 1213 hours, I could see an older white male with grey hair standing outside my stall. He was standing about three feet away and had a roller bag with him. The male was later identified by Idaho driver's license as Larry Edwin Craig (07/20/45). I could see Craig look through the crack in the door from his position. Craig would look down at his hands, 'fidget' with his fingers, and then look through the crack into my stall again. Craig would repeat this cycle for about two minutes. I was able to see Craig's blue eyes as he looked into my stall.

At 1215 hours, the male in the stall to the left of me flushed the toilet and exited the stall. Craig entered the stall and placed his roller bag against the front of the stall door. My experience has shown that individuals engaging in lewd conduct use their bags to block the view from the front of their stall. From my seated position, I could observe the shoes and ankles of Craig seated to the left of me. He was wearing dress pants with black dress shoes. At 1216 hours, Craig tapped his right foot. I recognized this as a signal used by persons wishing to engage in lewd conduct. Craig tapped his toes several times and moved his foot closer to my foot. I moved my foot up and down slowly. While this was occurring, the male in the stall to my right was still present. I could hear several unknown persons in the restroom that appeared to use the restroom for its intended use. The presence of others did not seem to deter Craig as he moved his right foot so that it touched the side of my left foot which was within my stall area.

At 1217 hours, I saw Craig swipe his hand under the stall divider for a few seconds. The swipe went in the direction from the front (door side) of the stall back towards the back wall. His palm was facing towards the ceiling as he guided it all the stall divider. I was only able to see the tips of his fingers on

AGENCY: AIRPORT POLICE DEPT.  
Jurisdiction: MN0272500  
Report Date / Time: 8/11/2007 12:22:18 PM  
Incident/Case Number: 07002008  
Case Description: Lewd Conduct  
Primary Officer Name/ID: Karsnia, Dave/DK011  
Approved By:  
Date/Time Printed: 8/12/2007 12:49:40 PM

**Narrative: Page 8**

my side of the stall divider. Craig swiped his hand again for a few seconds in the same motion to where I could see more of his fingers. Craig then swiped his hand in the same motion a third time for a few seconds. I could see that it was Craig's left hand due to the position of his thumb. I could also see Craig had a gold ring on his ring finger as his hand was on my side of the stall divider.

At about 1219 hours, I held my Police Identification in my right hand down by the floor so that Craig could see it. With my left hand near the floor, I pointed towards the exit. Craig responded, "No!" I again pointed towards the exit. Craig exited the stall with his roller bags without flushing the toilet. Without causing a disturbance, I discretely motioned for Craig to exit the restroom. I noticed that not all of the stalls were occupied. Craig demanded to see my credentials. I again showed Craig my credentials. Craig kept asking what was going to happen. I told Craig that we would speak in private. Craig said that he would not go. I told Craig that he was under arrest, he had to go, and that I didn't want to make a scene. Craig then left the restroom.

Once outside the restroom, Craig stopped near the entrance and was hesitant to comply. I told Craig that we would speak in a private area without embarrassing him or causing a disturbance. Craig was still hesitant to follow me at first, but then complied. He followed me towards the Police Operations Center (POC). Detective Nelson was seated outside of the restroom and followed us. Dispatch was notified that we had one in custody at 1222 hours.

When we got to the POC, we asked Craig to leave his bags outside of the interview room. This is standard procedure for safety reasons. I asked him for his driver's license. Craig left his roller bag outside the interview room, but brought his two-strapped carry bag in with him. I again stated that he had to leave the bag outside. Craig stated that his identification was in the bag. Craig handed me a business card that identified himself as a United States Senator as he stated, "What do you think about that?" I responded by setting his business card down on the table and again asking him for his driver's license.

Craig provided me his Idaho driver's license. In a recorded post-Miranda interview, Craig stated the following:

- 5 He is a commuter
- GHe went into the bathroom
- He was standing outside of the stalls for 1-2 minutes waiting for the stall.
  - o He has a wide stance when going to the bathroom and that his foot may have touched mine
- He reached down with his right hand to pick up a piece of paper that was on the floor
- He is unable to take his gold wedding ring off of his left ring finger

It should be noted that there was not a piece of paper on the bathroom floor, nor did Craig pick up a piece of paper. During the interview, Craig either disagreed with me or "didn't recall" the events as they happened.

Craig was worried about missing his flight. Detective Nelson tried to call the airline to hold the plane. The airline did not answer the phone. Craig's Criminal History was clear. Craig was explained the process for formal complaints. Craig was photographed, fingerprinted, and released pending formal

AGENCY: AIRPORT POLICE DEPT  
Jurisdiction: MN0272500  
Report Date / Time: 8/11/2007 12:22:19 PM  
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Approved By:  
Date/Time Printed: 8/12/2007 12:49:40 PM

**Narrative: Page 9**

complaint for Interference with Privacy (MSS 609.746) and Disorderly Conduct (609.72) at 1305 hours.

Sgt. Karsnia #4211  
Airport Police Department

# Exhibit C

Aug 30 07 03:55p

P. 3

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)  
Case 07002008**

LC: Am I gonna have to fight you in court?

DK: No. No. I'm not gonna go to court unless you want me there.

LC: 'Cause I don't want to be in court either.

DK: Ok. I don't either.

(inaudible)

DK: Um, here's the way it works, um, you'll you'll be released today, okay.

LC: Okay.

DK: All right. I, I know I can bring you to jail, but that's not my goal here, okay? (inaudible)

LC: Don't do that. You You

DK: I'm not going to bring you to jail

LC: You solicited me.

DK: Okay. We're going to get, We're going to get into that. (inaudible)

LC: Okay.

DK: But there's the, there there's two ways, yes. You can, you can, ah, you can go to court  
You can plead guilty.

LC: Yep.

DK: There'll be a fine. You won't have to explain anything. (inaudible) I know.

LC: Right.

DK: And you'll pay a fine, you be (inaudible), done. Or if you want to plead not guilty, ah, and I,  
I can't make these decisions for you.

LC: No, no. Just tell me where I am (inaudible) I need to make this flight.

DK: Okay. Okay. And then I go to people that are not guilty, then I would have to come to court  
and end up testifying. So those are the two things, okay. Did I explain that part?

LC: Yes.

DK: Okay. Um, ah, I'm just going to read you your rights real quick, okay? You got it on?

NN: Yep.

DK: Okay.

DK: Ah, the date is 6/11/07 at 1228 hours. Um, Mr. Craig?

LC: Yes.

DK: Sorry about that. (ringing phone)

1

Aug 30 07 03:55p

p. 4

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)**  
**Case 07002008**

DK: You have the right to remain silent. Anything you say can and will be used against you in court of law. You have the right to talk to a lawyer now or have a present, a lawyer present now or anytime during questioning. If you cannot afford a lawyer, one will be appointed to you without cost. Do you understand each of these rights the way I have explained them to you?

LC: I do.

DK: Do you wish to talk to us at this time?

LC: I do.

DK: Okay. Um, I just wanna start off with a your side of the story, okay. So, a

LC: So I go into the bathroom here as I normally do, I'm a commuter too here.

DK: Okay.

LC: I sit down, um, to go to the bathroom and ah, you said our feet bumped. I believe they did, ah, because I reached down and scooted over and um, the next thing I knew, under the bathroom divider comes a card that says Police. Now, um, (sigh) that's about as far as I can take it, I don't know of anything else. Ah, your foot came toward mine, mine came towards yours, was that natural? I don't know. Did we bump? Yes. I think we did. You said so. I don't disagree with that.

DK: Okay. I don't want to get into a pissing match here.

LC: We're not going to.

DK: Good. Um,

LC: I don't, ah, I am not gay, I don't do these kinds of things and...

DK: It doesn't matter, I don't care about sexual preference or anything like that. Here's your stuff back sir. Um, I don't care about sexual preference.

LC: I know you don't. You're out to enforce the law.

DK: Right.

LC: But you shouldn't be out to entrap people either.

DK: This isn't entrapment. All right. Um, you you're skipping some parts here, but what what about your hand?

LC: What about it? I reached down, my foot like this. There was a piece of paper on the floor, I picked it up.

DK: Okay.

LC: What about my hand?

DK: Well, you're not being truthful with me, I'm kinda disappointed in you Senator. I'm real disappointed in you right now. Okay. I'm not, just so you know, just like everybody, I, I, I, treat with dignity, I try to pull them away from the situation

LC: I, I

DK: and not embarrass them.

Aug 30 07 03:56p

P. 5

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)**  
**Case 07002008**

LC: I appreciate that.

DK: And I

LC: You did that after the stall.

DK: I will say every person I've had so far has told me the truth. We've been respectful to each other and then they've gone on their way. And I've never had to bring anybody to jail because everybody's been truthful to me.

LC: I don't want you to take me to jail and I think.

DK: I'm not gonna take you to jail as long as your cooperative but I'm not gonna lie. We...

LC: Did my hand come below the divider? Yes. It did.

DK: Okay, sir. We deal with people that lie to us everyday.

LC: I'm sure you do.

DK: I'm sure you do to sir.

LC: And gentleman so do I.

DK: I'm sure you do. We deal with a lot of people that are very bad people. You're not a bad person.

LC: No, I don't think I am.

DK: Okay, so what I'm telling you, I don't want to be lied to.

LC: Okay.

DK: Okay. So we'll start over, you're gonna get out of here. You're gonna have to pay a fine and that will be it. Okay. I don't call media, I don't do any of that type of crap.

LC: Fine.

DK: Okay.

LC: Fine.

DK: All right, so let's start from the beginning. You went in the bathroom.

LC: I went in the bathroom.

DK: And what did you do when you...

LC: I stood beside the wall, waiting for a stall to open. I got in the stall, sat down, and I started to go to the bathroom. Ah, did our feet come together, apparently they did bump. Well, I won't dispute that.

DK: Okay. When I got out of the stall, I noticed other other stalls were open.

LC: They were at the time. At the time I entered, I, I, at the time I entered, I stood and waited.

DK: Okay.

LC: They were all busy, you know?

Aug 30 07 03:56p

P. 6

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)**

**Case 07002008**

DK: Were you (inaudible) out here while you were waiting? I could see your eyes. I saw you playing with your fingers and then look up. Play with your fingers and then look up.

LC: Did I glance at your stall? I was glancing at a stall right beside yours waiting for a fella to empty it. I saw him stand up and therefore I thought it was going to empty.

DK: How long do you think you stood outside the stalls?

LC: Oh a minute or two at the most.

DK: Okay. And when you went in the stalls, then what?

LC: Sat down.

DK: Okay. Did you do anything with your feet?

LC: Positioned them, I don't know. I don't know at the time. I'm a fairly wide guy.

DK: I understand.

LC: I had to spread my legs.

DK: Okay.

LC: When I lower my pants so they won't slide.

DK: Okay.

LC: Did I slide them too close to yours? Did I, I looked down once, your foot was close to mine.

DK: Yes.

LC: Did we bump? Ah, you said so, I don't recall that, but apparently we were close.

DK: Yeah, well your foot did touch mine, on my side of the stall.

LC: All right.

DK: Okay. And then with the hand. Um, how many times did you put your hand under the stall?

LC: I don't recall. I remember reaching down once. There was a piece of toilet paper back behind me and picking it up.

DK: Okay. Was your palm down or up when you were doing that?

LC: I don't recall.

DK: Okay. I recall your palm being up. Okay.

LC: All right.

DK: When you pick up a piece of paper off the ground, your palm would be down, when you pick something up.

LC: Yeah, probably would be. I recall picking the paper up.

DK: And I know it's hard to describe here on tape but actually what I saw was your fingers come underneath the stalls, you're actually touching the bottom of the stall divider.

LC: I don't recall that.

Aug 30 07 03:56p

P. 7

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)**  
**Case 07002008**

DK: You don't recall

LC: I don't believe I did that. I don't.

DK: I saw, I saw

LC: I don't do those things.

DK: I saw your left hand and I could see the gold wedding ring when it when it went across I could see that. On your left hand, I could see that.

LC: Wait a moment, my left hand was over here.

DK: I saw there's a...

LC: My right hand was next to you.

DK: I could tell it with my ah, I could tell it was your left hand because your thumb was positioned in a faceward motion. Your thumb was on this side, not on this side.

LC: Well, we can dispute that. I'm not going to fight you in court and I, I reached down with my right hand to pick up the paper

DK: But I'm telling you that I could see that so I know that's your left hand. Also I could see a gold ring on this finger, so that's obvious it was the left hand.

LC: Yeah, okay. My left hand was in the direct opposite of the stall from you.

DK: Okay. You, you travel through here frequently correct?

LC: I do.

DK: Um,

LC: Almost weekly.

DK: Have you been successful in these bathrooms here before?

LC: I go to that bathroom regularly

DK: I mean for any type of other activities.

LC: No. Absolutely not. I don't seek activity in bathrooms.

DK: It's embarrassing.

LC: Well it's embarrassing for both...I'm not gonna fight you.

DK: I know you're not going to fight me. But that's not the point. I would respect you and I still respect you. I don't disrespect you but I'm disrespected right now and I'm not trying to act like I have all kinds of power or anything, but you're sitting here lying to a police officer.

LC: I, I, I,

DK: It's not a (inaudible) I'm getting from somebody else. I'm (inaudible)

LC: (inaudible)

(Talking over each other)

Aug 30 07 03:56p

p. 8

**Investigative Sergeant Dave Karsnia #4211 (DK) and Detective Noel Nelson #62 (NN) INTERVIEW WITH Larry Craig (LC)  
Case 07002008**

DK: I am trained in this and I know what I am doing. And I say you put your hand under there and you're going to sit there and...

LC: I admit I put my hand down.

DK: You put your hand and rubbed it on the bottom of the stall with your left hand.

LC: No. Wait a moment.

DK: And I, I'm not dumb, you can say I don't recall...

LC: If I had turned sideways, that was the only way I could get my left hand over there.

DK: It's not that hard for me to reach. (inaudible) it's not that hard. I see it happen everyday out here now.

LC: (inaudible) you do. All right.

DK: I just, I just, I guess, I guess I'm gonna say I'm just disappointed in you sir. I'm just really am. I expect this from the guy that we get out of the hood. I mean, people vote for you.

LC: Yes, they do. (inaudible)

DK: unbelievable, unbelievable.

LC: I'm a respectable person and I don't do these kinds of...

DK: And (inaudible) respect right now though

LC: But I didn't use my left hand.

DK: I thought that you...

LC: I reached down with my right hand like this to pick up a piece of paper.

DK: Was your gold ring on your right hand at anytime today.

LC: Of course not, try to get it off, look at it.

DK: Okay. Then it was your left hand, I saw it with my own eyes.

LC: All right, you saw something that didn't happen.

DK: Embarrassing, embarrassing. No wonder why we're going down the tubes. Anything to add?

NN: Uh, no.

DK: Embarrassing. Date is 6/11/07 at 1236 interview is done.

LC: Okay

# Exhibit D

## State of Minnesota County of Hennepin

## District Court

CCT LIST CHARGE STATUTE ONLY

M.O.C. GOC

CTY. ATTY  
FILE NO.  
027-2500CONTROLLING  
AGENCYCONTROL NO.  
07002008

I. MSS 609.746, subd. 1(c)

N2080

II. MSS 609.72, subd. 1(3)

M3030

COURT CASE NO.

DATE FILED

/ If more than 6 counts (see attached)

/ If domestic assault as defined by MS.51B.01, sub2a,b

## State of Minnesota

PLAINTIFF,

VS.

NAME: first, middle, last

LARRY EDWIN CRAIG

1000 WATER ST. SW., #6, WASHINGTON DC 20035

DLN #: Idaho ZD252539G PLATE #:

DEFENDANT.

Amended

Tab Charge Previously Filed

SERIOUS FELONY

SUMMONS

FELONY

WARRANT

GROSS MISDM DWI

ORDER OF DETENTION

GROSS MISDM

Date of Birth

SJIS COMPLAINT NUMBER

07/20/45

M.A.C.

## COMPLAINANT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense (s). The complainant states that the following facts establish PROBABLE CAUSE:

Your Complainant is a Sergeant with the Metropolitan Airports Commission Police Department who alleges the following:

On June 11, 2007, at approximately 12:00 p.m., Sergeant Karsnia entered the main men's public restroom of the North Star Crossing in the Lindbergh Terminal, at the Minneapolis-St. Paul International Airport, County of Hennepin, State of Minnesota. Sergeant Karsnia was in plain clothes for the purpose of investigating allegations of sexual conduct in the public bathroom. Sergeant Karsnia observed that there were numerous persons in the bathroom appearing to use the bathroom for its intended purposes and some, but not all, of the bathroom stalls were occupied. Sergeant Karsnia entered an unoccupied bathroom stall at the back of the restroom, the third stall from the back wall. Sergeant Karsnia observed the shoes and ankles of unidentified people in each of the bathroom stalls adjacent to his.

At approximately 12:13 p.m., Sergeant Karsnia observed an older white male, later identified as the above-named Defendant, standing outside of the stall occupied by Sergeant Karsnia. Sergeant Karsnia observed the Defendant look through the crack between the stall door and its frame, into the stall that Sergeant Karsnia was occupying. Sergeant Karsnia observed the Defendant appear to look at his own fidgeting fingers and then return again to gazing into the stall of Sergeant Karsnia through the crack. Sergeant Karsnia observed the Defendant repeat this conduct in the same pattern for approximately two minutes. The Defendant peered long enough that Sergeant Karsnia was able to observe that the Defendant had blue eyes.

At approximately 12:15 p.m. Sergeant Karsnia observed that the individual occupying the stall to the left of Sergeant Karsnia flushed the toilet and exited the stall. Sergeant Karsnia observed the Defendant enter the stall and could see that the Defendant had placed his roller bag against the front of the stall door, which Sergeant Karsnia's experience has indicated is used to attempt to conceal sexual conduct by blocking the view from the front of the stall. Sergeant Karsnia observed the Defendant's shoes and ankles. Sergeant Karsnia observed the Defendant tap his right foot, which Sergeant Karsnia recognized as a signal often used by persons communicating a desire to engage in sexual conduct. Sergeant Karsnia observed the Defendant tap his foot several more times and move his foot closer to the stall occupied by Sergeant Karsnia. Sergeant Karsnia moved his own foot up and down slowly. Sergeant Karsnia observed the Defendant move his right foot so that it touched Sergeant Karsnia's left foot, at which point the Defendant's foot was

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release be:

- (1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
- (2) detained, if already in custody, pending further proceedings.

and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:

Sergeant David Karsnia

COMPLAINANT'S SIGNATURE:

DATE:

Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.

PROSECUTING ATTORNEY'S SIGNATURE:

PROSECUTING ATTORNEY:

NAME/TITLE:

Christopher P. Renz, 3300 Edinborough Way, Suite 600, Edina, MN 55435 (952)835-7000

ADDRESS/TELEPHONE:

FORM B

Rev. 12/95

Larry Edwin Craig  
Page 2 of 3  
Hennepin County, M-SP Airport

within the stall area of the stall occupied by Sergeant Karsnia. Sergeant Karsnia could hear other people using the restroom and observed that the bathroom stall to his right was occupied.

Sergeant Karsnia then observed the Defendant swipe his hand under the stall divider for a few seconds, swiping from the front of the stall back towards the back wall, which was done with the Defendant's hand palm-up and guiding it along the stall divider. Sergeant Karsnia observed the Defendant again swipe his hand in the same motion and manner. Sergeant Karsnia observed the Defendant make the same motion for a third time. Sergeant Karsnia observed that it was the Defendant's left hand due to the Defendant's thumb position. Sergeant Karsnia also observed a gold ring on the Defendant's ring finger.

At approximately 12:19 p.m., Sergeant Karsnia showed the Defendant his police identification under the stall and pointed towards the exit, at which time the Defendant exclaimed "No!" Sergeant Karsnia again pointed to the exit. Sergeant Karsnia observed the Defendant exit the stall with his bag and without flushing the toilet. Sergeant Karsnia observed that not all of the stalls were occupied.

#### OFFENSE

Based on the above, Complainant alleges that on June 11, 2007, at the Minneapolis-St. Paul International Airport, County of Hennepin, State of Minnesota, Larry E. Craig, then and there being, violated the provisions of:

##### COUNT I.

PEEP: Interference with Privacy: Minn. Stat. Sec. 609.746, subd. 1(c), by surreptitiously gazing, staring, or peeping in the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subd. 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subd. 5, or the clothing covering the immediate area of the intimate parts and doing so with the intent to intrude upon or interfere with the privacy of the occupant, a Gross Misdemeanor.

##### COUNT II.

DISOR: Disorderly Conduct: Minn. Stat. Sec. 609.72, subd. 1(3), by engaging in offensive, obscene, abusive, boisterous, or rowdy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger or resentment in others, in a public or private place, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, a Misdemeanor.

Court Case #: M-SP Airport

PAGE 3 of 3

This COMPLAINT was subscribed and sworn to before the undersigned this \_\_\_\_\_ day of \_\_\_\_\_

NAME:

SIGNATURE:

TITLE:

**FINDING OF PROBABLE CAUSE**

From the above sworn facts, any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant (s) arrest or other lawful steps be taken to obtain Defendant (s) appearance in Court, or Defendant (s) detention, if already in custody, pending further proceedings. The Defendant (s) is/are thereof charged with the above-stated offense.

**SUMMONS**

X THEREFORE You, THE ABOVE-NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM/PM before the above-named court at \_\_\_\_\_ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

**WARRANT****EXECUTE IN MINNESOTA ONLY**

To the sheriff of the above-named county; or other person authorized to execute this WARRANT, I hereby order, in the name of the State of Minnesota, that the above-named Defendant (s) be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

**ORDER OF DETENTION**

Since the above-named Defendant (s) is/are already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant (s) continue to be detained pending further proceedings.

Bail:

Conditions of Release:

This COMPLAINT - SUMMONS, WARRANT, ORDER OF DETENTION, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this \_\_\_\_\_ day of \_\_\_\_\_.

NAME:

SIGNATURE:

TITLE:

Sworn testimony has been given before the Judicial Officer by the following witnesses:

STATE OF MINNESOTA COUNTY of

Hennepin

State of Minnesota

Plaintiff,

vs.

Larry Edwin Craig

Defendant (s)

Clerk's Signature or File Stamp:

**RETURN OF SERVICE**

I hereby Certify and Return that I have served a copy of this COMPLAINT - SUMMONS, WARRANT, ORDER OF DETENTION upon the Defendant (s) herein named.

Signature of Authorized Service Agent

# Exhibit E

**FILED**

STATE OF MINNESOTA

AUG 8 2007

DISTRICT COURT

COUNTY OF HENNEPIN

HENNEPIN COUNTY DISTRICT FOURTH JUDICIAL DISTRICT

COURT DEPUTY

Case No. 07043231

State of Minnesota,

Plaintiff,

vs

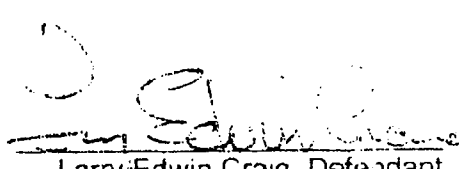
**PETITION TO ENTER  
PLEA OF GUILTY-MISDEMEANOR**

Larry Edwin Craig,

Defendant.

I, Larry Edwin Craig, am the defendant in the above action. My date of birth is July 20, 1945. I state to the court that:

1. I have reviewed the arrest report and/or complaint relating to the charges against me.
2. I understand the charge(s) made against me in this case, which are: Disorderly Conduct, pursuant to Minn. Stat. § 609.72 subd. 1(3), a Misdemeanor, and Interference with Privacy, pursuant to Minn. Stat. § 609.746, subd. 1(c), a Gross Misdemeanor. I am pleading guilty to the offense of Disorderly Conduct as a Misdemeanor.
3. I am pleading guilty to the charge of Disorderly Conduct as alleged because on June 11, 2007, within the property or jurisdiction of the Metropolitan Airports Commission, Hennepin County, specifically in the restroom of the North Star Crossing in the Lindbergh Terminal, I did the following: Engaged in conduct which I knew or should have known tended to arouse animosity or resentment in others which conduct was physical (versus verbal) in nature.
4. I understand that the court will not accept a plea of guilty from anyone who claims to be innocent.
5. I now make no claim that I am innocent of the charge to which I am entering a plea of guilty.

  
Larry Edwin Craig, Defendant

- 6 I understand that I am entering a plea of guilty to a misdemeanor charge for which the maximum sentence is a \$1000.00 fine and/or 90 days imprisonment
- 7 I am/am not represented by an attorney, whose name is \_\_\_\_\_
- 8 I and/or my attorney have reviewed the rights I will be waiving by entering this plea.
- 9 I understand that I have the following constitutional rights which I knowingly voluntarily and intelligently give up (waive) by entering this plea of guilty:
- a the right to a trial, to the court (judge only) or to a jury of six (6) members, at which I am presumed innocent until proven guilty beyond a reasonable doubt, and in which all jurors in a jury trial must agree I am guilty before the jury could find me guilty;
  - b the right to confront and cross-examine all witnesses against me;
  - c the right to remain silent or to testify for myself;
  - d the right to subpoena witnesses to appear on my behalf;
  - e the right to a pretrial hearing to contest the admissibility of evidence obtained from a search or seizure and/or information I offered to the police in the form of written or oral statement.
- 10 Understanding the above I am entering my plea of guilty freely and voluntarily and without any promises except as noted in number 11 below.
- 11 I am entering my plea of guilty based on the following plea agreement with the prosecutor: Plead guilty to the charge of Disorderly Conduct, pursuant to Minn. Stat. § 609.72, subd. 1(3); sentence is 10 days of jail time and a fine of \$1000.00; 10 days of jail and \$500.00 of the fine are stayed for 1 year on the conditions that Larry Edwin Craig does not commit any same or similar offenses, Larry Edwin Craig pays the unstayed fine amount of \$500.00, plus the surcharge of \$75.00 for a total of \$575.00.
- 12 I understand that if the court does not accept any agreement stated in number 11 above, I have the right to withdraw my plea of guilty and have a trial.
- 13 I am not entering this plea in person. As this plea is being entered via mail or through my attorney I understand that I am giving up my right to be present at the time of sentencing and to exercise my right to speak on my own behalf by making whatever statement or presenting whatever evidence that I wish. If I am not present when this plea is accepted by the court I understand that I am voluntarily waiving (giving up) my right to be present and consent to sentencing in my absence. I understand that the court may impose a sentence that includes probation and I

  
Larry Edwin Craig, Defendant

agree to abide by any probationary conditions and to receive notice of those conditions by U.S. mail at the following address:

Address-including zip code:

Washington, D.C. 20025

Dated this 1<sup>st</sup> day of August, 2007

Larry Bowin Craig

(Shall be completed for pleas entered by mail or without the defendant being present when defendant is represented.)

\_\_\_\_\_ states that he is the attorney for the defendant in the above criminal case; and that he/she has: (1) personally explained the contents of this petition to the defendant; (2) that to the best of his knowledge the defendant's constitutional rights have not been violated and no meritorious defense exists to the charge(s) to which defendant is pleading guilty; (3) that he has personally observed the defendant sign and date this petition; and (4) that he concurs in the entry of the defendant's plea of guilty.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_, Attorney for the Defendant

Larry Bowin Craig  
Larry Bowin Craig, Defendant